

IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF VIRGINIA
RICHMOND DIVISION

GILBERT JAMES, et al., on
behalf of themselves and all
others similarly situated,

vs.

EXPERIAN INFORMATION SOLUTIONS,
INC.

:
:
: Civil Action No.
: 3:12CV902
:
:

:
: September 16, 2013
:
:

COMPLETE TRANSCRIPT OF THE CONFERENCE CALL
BEFORE THE HONORABLE ROBERT E. PAYNE
UNITED STATES DISTRICT JUDGE

APPEARANCES:

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Matthew J. Erausquin, Esquire
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United States District Court

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1 P R O C E E D I N G S

2
3 THE COURT: Hello. This is James against
4 Experian Information Solutions, civil 3:12CV902. Who is
5 here for whom?

6 MR. CLARK: Good afternoon, Your Honor. Joseph
7 Clark, Dan McLoon, and Edward Wenger on behalf of
8 Experian.

9 MR. BENNETT: Your Honor, it's Len Bennett or
10 Leonard Bennett and Matthew Erausquin on behalf of
11 plaintiff.

12 THE COURT: All right, I confess to not
13 understanding where you are after having read the status
14 reports filed on the 12th and the 13th of September. Are
15 you in agreement that you have resolved disputes over
16 interrogatories of the plaintiff six, three, 14, and 20?
17 Mr. Bennett?

18 MR. BENNETT: Your Honor, we are.

19 THE COURT: All right, Mr. McLoon?

20 MR. McLOON: Yes, Your Honor.

21 THE COURT: Okay. Are you in agreement that you
22 have resolved request for production of the plaintiff
23 numbers four, nine, ten, 11, and 19, Mr. Bennett?

24 MR. BENNETT: We are, Your Honor, the plaintiff
25 is.

1 THE COURT: Mr. McLoon?

2 MR. McLOON: Yes, sir.

3 THE COURT: As to plaintiff's interrogatory
4 number five and request for -- you see, Mr. Bennett, what
5 I just asked you is if you all were in agreement on
6 document productions four, nine, ten, 11, and 19, but you
7 say -- and you say you are in agreement, but you say later
8 in the sentence that there will be further discussion over
9 request for production nine. How can that be? You see
10 the problem the simple old man has?

11 MR. BENNETT: Your Honor, we have agreement. The
12 defendant has made representations as to what it intends
13 to produce. The defendant has not produced its actual
14 substantive responses to these documents. It's
15 represented that it is going to start this week, and we'll
16 have a rolling production through the first week of
17 October, and our qualification is --

18 THE COURT: When will production be ended? What
19 is the last day of the first week of October?

20 MR. CLARK: Your Honor, Joe Clark here. That's
21 the goal. I mean we want to produce as quickly as
22 possible, and we're working with our client to do that --

23 THE COURT: Mr. Clark, we are beyond goal. We
24 are having deadlines, and if you fail to meet the
25 deadline, you will be in default. This has been going on

1 for entirely too long, and we are through with goals. Is
2 that clear?

3 MR. CLARK: Yes, sir.

4 THE COURT: The deadline is the end of the first
5 week of October.

6 MR. BENNETT: October 4th, Your Honor.

7 THE COURT: You have to do what is necessary to
8 meet that deadline, Mr. Clark. If that means putting more
9 of your lawyers on the job, more of your client's people
10 on the job, that's what it takes; okay?

11 MR. CLARK: Yes, sir.

12 THE COURT: Now, Mr. Bennett, you say as to
13 interrogatory number five, it looked like that that's
14 satisfied. Then you later say in a separate sentence that
15 interrogatory five requires further discussions. So I'm
16 having a little trouble with that one, too. Where do you
17 stand now on interrogatory five and request number nine?
18 Are you in agreement; yes or no?

19 MR. BENNETT: We are, Your Honor.

20 THE COURT: All right, Mr. McLoon?

21 MR. McLOON: Yes, sir.

22 THE COURT: Okay. Now, you are saying it is
23 possible it could resurface if something else by way of
24 production indicates that they haven't produced the right
25 thing; is that right?

1 MR. BENNETT: That's correct, Judge.

2 THE COURT: Okay. Now, interrogatory seven, 11,
3 15, 16, and 18 and request for production number seven,
4 15, 18, 26, 28, 29, and 31 are fully at odds, and you say
5 including whether the defendant has the right to
6 supplement its privilege log, and in the report of
7 Experian, it says that that's a moot issue -- I mean a
8 premature issue because they haven't identified -- claimed
9 any privileges, but Experian doesn't address whether they
10 say that you are, in fact, at odds over all those
11 enumerated interrogatories and requests that I just
12 listed.

13 That's a lot of interrogatories and document
14 productions. I really don't understand why it's necessary
15 to be dealing with these, but I guess I have no choice but
16 to deal with them one at a time. I'm not -- I'm hopeful
17 that perhaps you can get these things sorted out.

18 Where are the interrogatories? Interrogatory
19 number -- what is the first one that's at odds here,
20 number?

21 MR. BENNETT: Seven, Your Honor.

22 THE COURT: Seven, and you all don't have any
23 agreement on. "Describe and explain the complete process,
24 company rules, policy, and procedures by which your
25 computer hardware and software systems match and combine

1 tradelines and/or personal identifying information within
2 a consumer's credit files, and identify all documents that
3 explain or regard the same and provide the names of at
4 least five persons with substantial knowledge." What is
5 the problem with that one?

6 MR. McLOON: Your Honor, this is Dan McLoon.
7 This is essentially asking for every single piece of paper
8 having to do with how one of the largest computer systems
9 in the world operates.

10 THE COURT: No, it isn't. You are over-reading
11 it if you read it that way.

12 MR. McLOON: But more importantly, Your Honor, it
13 is really asking for a significant amount of detailed
14 information on issues that are not even in dispute in this
15 case. This is not a case that's going to turn on whether
16 Experian can properly find a consumer's file with less
17 than full identifying information. There is simply no
18 dispute about that.

19 THE COURT: Well, there is, too. You say -- you
20 won't even give them information that they need to
21 identify people, and you say it's protected.

22 MR. McLOON: Your Honor, Experian has had a
23 policy for certain types of disputes only that without a
24 social security number, we have two problems. Number one,
25 the people who are being asked to determine who owns the

1 account are telling us, we can't figure that out without
2 you giving us the full social. It doesn't turn on
3 Experian's system. It turns on what the third parties
4 have told us they need in order for them to do the work
5 that the FCRA requires them to do.

6 Your Honor understands that the way the FCRA is
7 laid out, when a consumer comes to Experian and disputes
8 something that Experian is reporting, the statute says
9 Experian has to go back to its source and convey to the
10 source the consumer's dispute and ask the source to
11 confirm the accuracy of the information. The policies
12 that the plaintiffs are challenging was derived because of
13 what the sources were telling us.

14 THE COURT: Well, if the source can't identify it
15 -- when you are told to go back to the source and the
16 source can't identify it, then you have no business
17 reporting on it at all, because all of a sudden you know
18 you can't be sure that it's the right person. So you just
19 deep-six that from your, from what you report on and say,
20 sorry, we're not reporting on that.

21 MR. McLOON: Your Honor, it is not that simple.

22 THE COURT: Well, it is that simple. It's going
23 to be real simple, Mr. McLoon, it can be that simple, and
24 you all try to make everything complicated because you try
25 to put a lot of players on the field, run a screen pass,

1 and get by, go to the end zone with all the blockers in
2 the way. That's just not going to work.

3 MR. McLOON: Your Honor, I absolutely respect
4 your position, but if you could just give me a minute.

5 THE COURT: I haven't got that many minutes in my
6 life to go through all the dodges that you all are putting
7 out.

8 MR. McLOON: Your Honor, I'm an officer of the
9 court. I am not creating any dodge. This is a
10 complicated matter that there are many issues that our
11 client is trying to grapple with that are completely
12 legitimate issues. It has nothing to do with dodging
13 anything.

14 It is absolutely in the public's best interest
15 that when a consumer has derogatory credit in their actual
16 history, that we accurately report that. There is a whole
17 industry out there that's trying to subvert that. It's
18 called credit repair, and it is a common credit repair
19 technique to write a letter to a credit bureau and say, I
20 don't have this account, take it off my credit report.

21 There is a whole industry out there that we would
22 provide evidence on at trial that is dedicated to do that,
23 and when they succeed, honest consumers who pay their
24 bills on time have to pay higher costs of borrowing
25 because of that. It is in no one's interest, Your

1 Honor --

2 THE COURT: You don't have to --

3 MR. McLOON: -- to allow credit repair to go on.

4 THE COURT: We're not trying credit repair.

5 We're trying what you do.

6 MR. McLOON: But, Your Honor, that is the exact
7 process that the credit repair clinics follow. They
8 submit these exact kind of disputes to Experian.

9 THE COURT: Does this case involve a credit
10 repair?

11 MR. McLOON: We believe it does.

12 THE COURT: Which one?

13 MR. McLOON: We haven't taken the plaintiffs'
14 deposition. We believe the named plaintiffs in some cases
15 were trying to get accurate accounts off of their credit
16 reports.

17 THE COURT: What reason do you have to believe
18 that?

19 MR. McLOON: Because of the language that they
20 use. They used language that we have seen credit repair
21 clinics use. They use very tricky language saying, I
22 don't owe anything to this entity, so take it off my
23 credit report.

24 Well, in fact, I think when we take the
25 depositions, we're going to prove they, in fact, did have

1 accounts with those entities --

2 THE COURT: Why would you ever have to go to a
3 lawsuit and get to that point? The fact of the matter is,
4 if they tell you they don't owe it, you can't be reporting
5 it as in credit default. You have to then go find out
6 what's going on, and that's the problem. You don't want
7 to do that. You don't want to spend the money to do it.

8 MR. McLOON: Your Honor, it's absolutely false.
9 The evidence is going to be the policy we're following is
10 more expensive than the policy the plaintiffs would like
11 us to follow. It costs us more to do it the way we're
12 doing it.

13 THE COURT: Well, let's take number seven. You
14 need to describe and explain the complete process, company
15 rules, policy, and procedures by which your computer
16 hardware and software systems match and combine tradelines
17 and/or personal identifying information within a
18 customer's credit file.

19 MR. McLOON: Your Honor, what that is is a series
20 of mathematical algorithms.

21 THE COURT: You have to do that, figure out a way
22 to express it; all right?

23 MR. McLOON: We can describe it in a high-level
24 English language, but, Your Honor, the plaintiffs don't
25 intend to use this as evidence. There's no way they could

1 present a series of algorithms to the jury.

2 MR. BENNETT: We absolutely -- I'm sorry. I
3 don't mean to interrupt. I disagree strongly with a large
4 part of what Mr. McLoon has said. We absolutely intend to
5 use that information, and every other bureau has produced
6 it. Experian has represented that it is its prized crown
7 jewels even though we have a protective order.

8 The question in this case, Your Honor, is a big
9 issue, a big issue as to merit and as to willfulness, is
10 why doesn't Experian apply the same "you have to provide
11 your full social security number when a creditor who pays
12 it money for a credit report buys a credit report"?

13 Why will Experian provide a report on name and
14 address but the consumer asks to make a dispute, not to
15 request a copy of a credit report but to make a dispute
16 just like all the individuals in this case that
17 objectively did not owe this money. The Court is familiar
18 with the Midland litigation --

19 THE COURT: You're getting off the track. You're
20 getting off the track.

21 MR. BENNETT: I'm sorry.

22 MR. McLOON: Your Honor, he's misstated our
23 policy.

24 THE COURT: Shhh. Please.

25 MR. McLOON: -- not our policy to say we have to

1 have a social --

2 THE COURT: Please. We're in class certification
3 discovery; right? Mr. Bennett?

4 MR. BENNETT: We are, but also the defendant
5 wanted to preserve willfulness as an argument in phase one
6 as well.

7 THE COURT: You mean the defendant wants
8 willfulness litigated?

9 MR. McLOON: We would move for summary judgment,
10 Your Honor.

11 THE COURT: Then you have to provide discovery on
12 it, and you have to answer number seven. And you have --
13 you are just going to do it.

14 MR. McLOON: Your Honor, this is Dan McLoon, and
15 I apologize for taking your time.

16 THE COURT: It's not taking my time. It's taking
17 the time needlessly.

18 MR. McLOON: I don't believe it's needless. I'm
19 an officer of this court, and I'm telling you I don't
20 believe it's needless.

21 THE COURT: Okay, Mr. McLoon, you have had your
22 say, and answer that. If you can't answer, if you say you
23 have to provide algorithms, then perhaps you have to have
24 an expert help you prepare your answer, but I would assume
25 that the plaintiff, from what Mr. Bennett has said, is

1 that the plaintiff will then take what you have and use
2 that as it has in the past with its own experts.

3 MR. McLOON: Your Honor, it will not happen.
4 This is not going to be a case that's going to turn on
5 matching algorithms. It has nothing do with what's in
6 dispute here.

7 THE COURT: Mr. McLoon, answer it. How long do
8 you need to answer it?

9 MR. McLOON: We would need at least 30 days.

10 THE COURT: You can have 15. He's been piddling
11 around here discussing this issue and talking about this
12 issue for months. That's a four-corners offense.

13 All right, now, the next part of interrogatory
14 seven is, "and identify all documents that explain or
15 regard the same and provide the names of at least five
16 persons with substantial knowledge of these systems and
17 processes." Is there any reason you can't provide the
18 names of five people who have substantial knowledge of the
19 processes?

20 MR. McLOON: I don't believe there are five
21 people. I think it's probably about two.

22 THE COURT: Can you provide the names of all, and
23 if it turns out that there are more than five, you do at
24 least five. So the names of all or five if there are
25 five.

1 MR. McLOON: Your Honor, I don't think there is
2 any problem with that. I think we put that into our
3 status report. We are happy to provide the names that are
4 available.

5 THE COURT: "All documents that explain and
6 regard the same," meaning the policies, procedures, et
7 cetera. Now, Mr. Bennett, you've been around here long
8 enough to know that that's very broad.

9 MR. BENNETT: We've narrowed it, Your Honor, in
10 the meet-and-confer process. Their actual -- the matching
11 rules are reduced to paper by this defendant, and it is
12 those documents that we have clarified in our multiple
13 meet-and-confer sessions that we are asking.

14 THE COURT: And they're called matching rules?

15 MR. BENNETT: It would be the matching rules,
16 Your Honor.

17 THE COURT: And that satisfies that clause of
18 number seven?

19 MR. BENNETT: Yes, Your Honor.

20 THE COURT: Do you agree with that, Mr. McLoon?

21 MR. McLOON: I don't believe those documents
22 exist. If they exist, I'm happy to produce them.

23 THE COURT: Well, he said that you all have
24 agreed in the meet-and-confer process that they do exist
25 and that's how -- and that you agree to produce them. Now

1 you are saying --

2 MR. McLOON: I have to defer to Mr. Clark,
3 because I've been out of town for the last couple of days.
4 I don't believe that was an agreement --

5 MR. BENNETT: Judge, that wasn't what I meant. I
6 said the plaintiffs have clarified that we would narrow
7 this request to that category or that subset of documents.
8 The defendant has taken the position from the beginning
9 that they will not produce --

10 MR. McLOON: We don't think they exist in that
11 form, Your Honor.

12 THE COURT: How do they exist?

13 MR. McLOON: I believe they're computer programs.
14 I think they're software.

15 MR. CLARK: They are algorithms, mathematical
16 formulas.

17 THE COURT: Then you produce the algorithms and
18 somebody to explain them, and you can take the deposition
19 of someone to explain them. Have your expert sit in on
20 the deposition, help you with the questions. But if they
21 do exist in any form other than the algorithm, other than
22 the computer algorithms, you provide those documents to
23 which he's narrowed the request. That's number seven.
24 Number 11.

25 MR. BENNETT: We've narrowed number 11 to -- the

1 dispute is whether or not --

2 THE COURT: Tell me how you've narrowed it by
3 word. How does it read now?

4 MR. BENNETT: We've asked for all of the lawsuits
5 and complaints made to the Federal Trade Commission or the
6 Consumer Financial Protection Bureau. We've narrowed that
7 to within the last year and only those that pertain to the
8 consumers' claim that Experian did not conduct the
9 investigation the FCRA requires, and --

10 THE COURT: That's what it says in the last
11 clause, "wherein it was alleged that Experian failed to
12 conduct a proper investigation or reinvestigation with
13 respect to the information."

14 MR. BENNETT: Yes, Your Honor, but we narrowed it
15 by time, so a year before the complaint.

16 THE COURT: What is the date? Since when, since
17 what date?

18 MR. BENNETT: Judge, we would ask for August 1,
19 2012, forward.

20 THE COURT: Are you in agreement with that?

21 MR. CLARK: Yes, Your Honor. We produced a list
22 of federal cases --

23 THE COURT: Excuse me just a minute. August what
24 date, 1?

25 MR. BENNETT: August 1.

1 THE COURT: 2012. So it's -- this is complaints,
2 investigations, inquiries, administrative proceedings, and
3 civil or criminal actions made or brought against you in
4 which you were involved since August 1, 2012.

5 MR. CLARK: My understanding was that plaintiffs
6 had limited this to civil complaints, not criminal
7 complaints.

8 THE COURT: Is that correct -- are there criminal
9 complaints?

10 MR. BENNETT: No.

11 THE COURT: So you agree with that, Mr. Bennett?

12 MR. BENNETT: Yes, Your Honor.

13 MR. CLARK: The other issue, and Matt's
14 correspondence to us is that, you know, he wanted any
15 attorney general complaints from any of the 50 states, and
16 that was beyond the scope of the several meet-and-confers
17 that we had on this particular subject wherein we had, I
18 thought, agreed to limit it by time, and we agreed to
19 limit it by government agency, the FTC and CFPB as well as
20 any federal cases.

21 So I think that's really how this one landed back
22 on your radar, and if they're going to pull the attorney
23 general complaints from any of the 50 states, I mean, that
24 would be consistent with what we thought we agreed to
25 earlier.

1 MR. BENNETT: We're not going to ask for --

2 THE COURT: I want to get the wording down for an
3 order. The problem is you all yap and talk, but we've got
4 to reduce it to an order.

5 Identify any and all complaints, investigations,
6 inquiries, administrative proceedings, and civil actions
7 made or brought against you or in which you were involved
8 since August 1, 2012, that was instituted by, and where do
9 we go from there?

10 MR. BENNETT: We would -- Your Honor, we would
11 ask for by the Federal Trade Commission or the Consumer
12 Financial Protection Bureau.

13 THE COURT: Instituted by the Federal Trade
14 Commission or what?

15 MR. BENNETT: We would -- actually we would say
16 by or through, which would still be a subset of the
17 current draft 11, by or through the Federal Trade
18 Commission or the Consumer Financial Protection Bureau.

19 THE COURT: And then it will be relating to --

20 MR. BENNETT: We would actually narrow it, so we
21 would skip that part of the text and take it to "wherein
22 it was alleged."

23 THE COURT: All right. Are we in agreement now,
24 gentlemen?

25 MR. CLARK: Your Honor, I'd like to know whether

1 or not to satisfy this interrogatory and RFP if we've got
2 to produce the actual paper complaints that these various
3 people filed or would have provided. The FTC has the
4 actual FTC complaints.

5 THE COURT: You have a copy of it.

6 MR. McLOON: Your Honor, they are not in a way
7 that we can access them. We keep a log of them. We can
8 produce the log, but, you know, if there's 10,000, it
9 could take us a year to find them.

10 THE COURT: That answer is not acceptable. Try
11 again.

12 MR. McLOON: Your Honor, they're just not sorted
13 in a way that we can look for them. We don't keep a file
14 cabinet of all complaints from the FTC. If we did, it
15 would be easy, we'd be happy to do it.

16 We're not trying to obfuscate here. We're not
17 trying to escape anything. It's just not in a form we can
18 find them. We can give them the names. If they want a
19 sample, we'll be happy to pull a sample for them.

20 THE COURT: Where are you going to pull the
21 sample from?

22 MR. McLOON: Well, we would have to do the manual
23 searches. If they say, give us a sample of 20 names, we
24 have to do a manual search. Each manual search probably
25 takes 20, 25 minutes.

1 THE COURT: A manual search of what?

2 MR. McLOON: They are stored by consumer name by
3 date that they come in, and they are stored on a system
4 where you have to know the consumer's name and the date
5 that it came in, and you go to that place and you look for
6 it, and it takes a long time.

7 THE COURT: Where are all those documents stored?

8 MR. McLOON: In Texas.

9 THE COURT: In boxes?

10 MR. McLOON: Well, I think there are some --
11 depending on which date you are talking about, there's
12 electronic copies, but they're just not in a searchable
13 database where you can plug in, give me every FTC
14 complaint dealing with a dispute. They're not organized
15 that way. They're not searchable that way.

16 THE COURT: That doesn't mean that you don't have
17 to produce them.

18 MR. McLOON: Your Honor --

19 THE COURT: That means --

20 MR. McLOON: -- I am telling you --

21 THE COURT: Mr. McLoon, please.

22 MR. McLOON: -- happy to give them the list
23 because we can produce the list electronically. If
24 there's some sample from the list they'd like to look at,
25 we can do it, but to pull thousands and thousands of

1 disputes that have nothing to do -- Your Honor, are we
2 really going to litigate thousands of other people's
3 disputes that have nothing to do with this case? These
4 involve disputes that have nothing to do with whether or
5 not there's a complete social security number provided.

6 That's the issue in this case. We get thousands
7 of disputes on completely different issues every day, and
8 we'd be pulling thousands and thousands of disputes that
9 have nothing to do with this case.

10 THE COURT: Do you want to narrow it to the ones
11 where the social security numbers are at issue?

12 MR. McLOON: The problem is we have no way of
13 identifying those without doing a manual search and
14 pulling every one out and looking at it. They're just not
15 sorted that way.

16 THE COURT: Mr. McLoon, that is precisely the
17 point. You use great words like thousands and many hours
18 and so forth, but if you want me to do the balancing
19 that's required in the discovery process, it is your
20 burden to tell me how many hours, how long will it take,
21 et cetera.

22 MR. McLOON: There would be over 60,000 total
23 disputes of this nature, and each one would take 15 to
24 20 minutes to find.

25 THE COURT: Well, then you figure out how long

1 all that is and tell me what it costs, and we'll deal with
2 it. That's the way you deal with this kind of problem,
3 instead of just complaining about it.

4 MR. McLOON: I've been trying to work with
5 counsel who we have had, generally, a good relationship
6 with, and I don't think they're accusing me of lying to
7 them when I say there is no way for us to easily recover
8 those.

9 I've explained to them what we can produce. I
10 certainly told them, when we were meeting in person after
11 you ordered us to do that over the videoconference, that
12 we can pull the electronic examples, and if there's some
13 reason that they want to pull a sample of all those
14 disputes, that's fine.

15 I don't think there's going to be any genuine
16 issue that we weren't aware that there was this issue, and
17 we are going to have to explain at trial why it was that
18 we were grappling with lots of competing interests,
19 including the interests of consumers to do legitimate
20 disputes, and we tried to balance all those interests, but
21 that has nothing to do with us claiming that we were
22 unaware of the issue. So, I mean, I don't think there's
23 any dispute --

24 THE COURT: Will you stipulate that you were
25 aware of these disputes?

1 MR. McLOON: We were aware of concerns of
2 consumers who wished to produce disputes without providing
3 full socials, yes. We will stipulate to that.

4 MR. BENNETT: Your Honor, we've offered them
5 stipulations regarding --

6 THE COURT: Mr. Bennett, what is wrong with that
7 stipulation?

8 MR. BENNETT: Because it doesn't address Rule 23.
9 We aren't going to have a problem proving willfulness, in
10 my opinion, and I would never call Mr. McLoon a liar or
11 another opponent a liar, particularly in front of the
12 Court, but I absolutely find it an incredible and
13 unbelievable assertion that we've narrowed this list --
14 it's not 60,000.

15 We've narrowed the Consumer Financial Protection
16 Bureau list to just since August of '12. We've given the
17 defendant -- the CFPB has a summary that doesn't provide
18 the details. It has the type of dispute, for failure to
19 investigate, for example, to Experian and has a number
20 assigned and a date. We've given the defendant that list,
21 which is nowhere close to the 60,000 Mr. McLoon suggests,
22 and they can identify by date.

23 If it's anything like Equifax and TransUnion, the
24 disputes that come in through the government regulators
25 are directed to a specific source at Experian. They're

1 not, for example, sent to Chile, and those would be easily
2 isolated.

3 MR. McLOON: How many are there?

4 MR. BENNETT: There are several thousand.

5 MR. CLARK: There are 3,000 in the list we sent
6 you.

7 MR. BENNETT: And that was not August of 2012.
8 It was even broader. The August 12 is more narrow than
9 that.

10 MR. McLOON: So to pull every one of those at
11 20 minutes per is 5,000 hours.

12 MR. BENNETT: If your suggestion is that it would
13 take you 20 minutes, which is ten times or more than that
14 of what the individuals at each company would take if
15 they're going to actually do a full-blown dispute, and
16 regardless, Your Honor, there is not an objection that is
17 in the papers that would -- and certainly there's none
18 that's been substantiated at all other than what I think
19 to be the --

20 THE COURT: What are you talking about, there's
21 not an objection? There's a whole bunch of objections.

22 MR. CLARK: We objected because we thought this
23 would be unduly burdensome, and these modifications are
24 helpful. Your Honor, what I'm wondering is if you would
25 permit us to provide the FTC list, which I think we can do

1 here in short order, and allow us to do, you know, perhaps
2 a random sampling or pull from that list so we're not
3 going after some 3,000.

4 We can work with plaintiffs. They can identify a
5 handful or number, and we could try to pull those and get
6 those ones crossed off. We've been working on preparing a
7 list --

8 THE COURT: What is the basis of asserting it
9 takes 25 minutes to do this once you are into the
10 electronic database or the document boxes where these are
11 kept?

12 MR. McLOON: Your Honor, this is Dan McLoon.
13 That is my experience having sat down and watched someone
14 do it. Now, if there is a faster way to do it, I'm
15 unaware of it. Joe, are you aware of a faster way to do
16 it?

17 MR. CLARK: No, I am not.

18 MR. McLOON: The reason that, Len, it takes
19 longer is because the average dispute, when a consumer
20 writes a dispute, the agent is not pulling copies of prior
21 correspondence from the consumer. That's what has to be
22 done here.

23 It isn't just finding the consumer's file. Yes,
24 the consumer's file can be found in a matter of a couple
25 of minutes. If you want the DR logs from those consumers,

1 if you want the DR logs from those consumers, we could do
2 it very quickly. You are right. It would be a couple
3 minutes per times 3,000, but that's still an awful lot of
4 time.

5 MR. BENNETT: Your Honor, we offered Mr. McLoon,
6 we offered the defendant, and I haven't talked to Mr.
7 McLoon since the first meet-and-confer right after the
8 very first hearing, we have offered the defendant's
9 counsel a stipulation that if we were to have these
10 records, that we would be able to identify specific
11 consumers as members of the class, and the defendant
12 refuses that stipulation and wants to claim it's really
13 difficult because if you had to look at the individual
14 records how impossible it would be.

15 At the same time, with respect to this
16 interrogatory and related RFP and another one for which
17 there was no burdensomeness objection related to the class
18 list information, in both instances, the defendant wants
19 to have its cake and eat it, too. It wants to say, we're
20 not going to give you the underlying documents, but if you
21 had to use those underlying documents, which we're not
22 going to share with you, nobody would be able to ascertain
23 and identify a class.

24 MR. McLOON: I don't believe that's our position.
25 Our position is that if you looked at the documents --

1 THE COURT: Slow down.

2 MR. McLOON: Our position is it's very
3 time-consuming to find those documents.

4 THE COURT: Yes, but then you're going to use
5 that as the basis as opposing class certification.

6 MR. McLOON: We will not use that it takes time
7 to find the documents as a basis to oppose class.

8 THE COURT: Anything else?

9 MR. CLARK: On this point?

10 THE COURT: On that issue, yes.

11 MR. CLARK: Yeah, Len has offered a stipulation
12 here, and he's done this --

13 THE COURT: Who is that; Mr. Clark? Give us your
14 name, if you will.

15 MR. CLARK: Joe, Joe Clark. It would be helpful
16 for us to actually see the draft stipulation before we
17 agree to it. I think some of these we may have been able
18 to resolve by way of stipulation, but it's hard to sort of
19 agree to something in principle or theory, and any time
20 we've asked for a stipulation, we've tried to draft
21 something up so we can trade copies and understand what it
22 is we're stipulating.

23 THE COURT: That's something you could have asked
24 for in your discussions, and apparently you didn't, so
25 that's it.

1 All right, on 11, it's been modified to read,
2 "Identify any and all complaints, investigations,
3 inquiries, administrative proceedings, and civil actions
4 made or brought against you in which you were involved
5 since August 1, 2012, that was instituted by or through
6 the FTC, Federal Trade Commission, or Consumer" what is
7 it?

8 MR. McLOON: Financial Protection Bureau.

9 THE COURT: "Federal Protection Bureau wherein it
10 was alleged that Experian failed to conduct a proper
11 investigation or reinvestigation with respect to the
12 information."

13 Now, the wherein clause, Mr. Bennett, seems to
14 be -- how is that tethered to this particular case?

15 MR. BENNETT: Because the violation in this case
16 is just that. It is that the consumer made the dispute,
17 and defendant refused to do an investigation. The
18 Consumer Financial Protection Bureau reasons that are --
19 like they're multiple-choice reasons.

20 The one reason that most closely fit this of all
21 the different ways that a consumer or reasons a consumer
22 might make a CFPB dispute is the one that we've described
23 in here.

24 THE COURT: Well, what is it? It's not
25 described.

1 MR. BENNETT: It's that Experian failed to
2 conduct a proper investigation with respect to the
3 consumer's dispute.

4 THE COURT: How does that fit the class issue?
5 You are talking about class discovery now.

6 MR. BENNETT: Yes, Your Honor. Because the
7 class -- the question is that the consumer disputes were
8 homogenous enough for purposes of Rule 23 analysis that
9 they all received the same two dispute or response forms
10 from Experian.

11 THE COURT: Why wouldn't it be more reasonable to
12 narrow this to wherein the dispute was X which is what
13 these people are complaining about?

14 MR. McLOON: Failed to conduct an investigation
15 because you didn't provide a full social.

16 MR. BENNETT: Because the CFPB categorization is
17 not broken down in that fashion, and the defendant had
18 never raised that suggestion to us in any of our
19 meet-and-confer discussions.

20 THE COURT: Whether they did or didn't, I mean,
21 it seems to me like in order to tailor the discovery to
22 the allegations in the complaint, that would be a
23 reasonable narrowing, and I don't understand what you are
24 saying about the CFPB and its formats or listings. What
25 does that mean? Help me out with it.

1 MR. BENNETT: Sure, Your Honor. The consumer --
2 under the law, the consumer can make a dispute directly to
3 the credit bureaus. The consumer can also make a
4 dispute -- it used to be the Federal Trade Commission, but
5 now they can make it to the Consumer Financial Protection
6 Bureau.

7 That dispute is then automatically forwarded to
8 Experian. In addition, if the dispute is unheeded, then
9 the regulator can actually contact Experian directly. So
10 the question would not be a complaint about the failure to
11 provide the social. We don't expect that that would
12 exist, but it would be a series of consumer disputes that
13 came into Experian for which Experian then, even though it
14 could have identified the consumer, refused to conduct an
15 investigation because the consumer didn't dot every I or
16 cross every T the way Experian demanded.

17 THE COURT: All right, I understand what the
18 difference is. All right, the objections are overruled.
19 Answer the question as modified on the record and provide
20 the documents respecting the same. What is the
21 correlative document request?

22 MR. BENNETT: 15 and 26.

23 THE COURT: Is there any independent objection to
24 15 and 26, or 15 or 26?

25 MR. CLARK: I think it's the same basis or the

1 same theory that we discussed with regard to interrogatory
2 number 11. There is -- to the extent there is any
3 additional issue, we're sort of back to these privacy
4 concerns which --

5 THE COURT: We'll deal with those later.

6 MR. CLARK: Yes, sir.

7 THE COURT: All right, now, that takes care of
8 11. Interrogatory 15, "Identify each and every instance
9 within the five years preceding the filing of this
10 complaint in which you provided notice to a consumer that
11 you would not process his or her dispute without the
12 consumer providing additional information or
13 documentation." Then they give you some examples. The
14 only objection is the privacy one here.

15 MR. McLOON: Your Honor, this is the one that,
16 when we were speaking with you by phone before, it was
17 your suggestion that we just provide the numbers, because
18 that's all that was needed for class certification, and
19 Mr. Bennett's concern was, well, he wasn't sure that we'd
20 be able to identify who it was that corresponded with the
21 number, and my representation to you then and now is, the
22 numbers we can provide we can say that we would be able to
23 provide the identification of each individual
24 corresponding to the numbers that we provide.

25 MR. BENNETT: Your Honor, my recollection of the

1 last phone call with Your Honor was different than Mr.
2 McLoon's but you asked me, so why did we need more than
3 numbers. I explained, as I did earlier in this call,
4 which is, this defendant's primary opposition is that you
5 could not look at these records and determine whether
6 someone is a class member, and we disagreed.

7 MR. McLOON: That's not our position, Len.
8 That's not our position. We have never said if you
9 looked --

10 THE COURT: Mr. McLoon, please let him finish
11 what he was saying.

12 MR. McLOON: I apologize, Your Honor. I am sorry
13 to do that.

14 MR. BENNETT: We are particularly sensitive to
15 being surprised later in class certification briefing
16 regarding claims of lack of ascertainability or
17 typicality, and we have proposed a number of stipulations
18 which relate only to what would be obtained from these
19 documents, and the defendant does not agree to those
20 stipulations.

21 There was no objection other than it would
22 violate the Fair Credit Reporting Act. It would not have,
23 but Your Honor has already ruled and has already issued
24 the order that's in PACER that this objection is
25 overruled. There was no burdensome, there is no scope or

1 other objection here. We have a protective order to keep
2 all this protected.

3 THE COURT: All right. I've got the objection in
4 front of me. I'm looking actually at the document filed
5 by the defendant. I've been back through it. The
6 objection is overruled, and you should provide that which
7 is requested in the first sentence of interrogatory number
8 15. The example is just only for your help.

9 The next one is interrogatory 16. "For each and
10 every instance within the five years preceding the filing
11 of this complaint in which you processed a consumer
12 dispute for a consumer who did not provide a full social
13 security number within his or her dispute, provide the
14 consumer's full name, last known address, and the dates
15 that you processed the dispute." The objection is the
16 privacy issue.

17 MR. CLARK: Your Honor, in our correspondence, we
18 sent a copy of the California state constitution as well
19 as a case, *Pioneer Electronics*, also out in California,
20 and we really have some concerns there. There may very
21 well be other states with similar constitutional
22 provisions.

23 We can envision a lawsuit from consumers in
24 California or any one of those states, you know,
25 challenging us for violating these provisions, and, you

1 know, that is a grave and serious concern.

2 THE COURT: Why do you need these, Mr. Bennett?

3 MR. BENNETT: Your Honor, these -- this is the
4 same -- we don't need these. We withdraw it given the
5 Court's ruling on the previous --

6 THE COURT: You are withdrawing interrogatory 16;
7 is that right?

8 MR. BENNETT: Yes, Your Honor.

9 THE COURT: All right.

10 MR. BENNETT: I don't agree with their
11 explanation of California constitutional claim, but
12 there's no reason to fight for this one. We have the
13 information based --

14 THE COURT: 18. "For instances from the five
15 years preceding the filing of this complaint in which you
16 have sold a credit report to a third party where the third
17 party did not supply a social security number as part of
18 the inquiry, state the name of the consumer, the last
19 known address for that consumer, and the dates on which
20 you sold the credit file to that party."

21 MR. CLARK: We don't understand --

22 THE COURT: Just a minute, please.

23 MR. BENNETT: Judge, we've asked the defendant to
24 stipulate that it does not require its customers to
25 provide a social security number in order to obtain a

1 consumer report.

2 MR. McLOON: We have no problem with that.

3 MR. BENNETT: Then 18 is resolved, Your Honor.

4 THE COURT: 18 has been resolved, and that is the
5 stipulation, and the stipulation is what, Mr. Bennett?

6 MR. BENNETT: That Experian does not require its
7 customers to provide a consumer's social security number
8 in order to purchase a credit report.

9 THE COURT: That's stipulated. Now, to which
10 extent do document requests seven, 15, 18, 26, 28, 29, and
11 31 correlate to what I've already ruled and I don't need
12 to worry with them anymore?

13 MR. McLOON: Seven you've already addressed, Your
14 Honor.

15 THE COURT: What about 15, 18, 26?

16 MR. BENNETT: 26 you've already addressed.

17 THE COURT: Where is 15? Where is this,
18 plaintiffs' first set of request for admissions? There's
19 no objection to that. The objections to the request for
20 admissions start with 26.

21 MR. CLARK: This is document request, Your Honor.

22 THE COURT: Oh, I'm sorry. Where are the
23 document request objections?

24 MR. CLARK: The back.

25 MR. BENNETT: Right after that, Judge.

1 THE COURT: Seven I've already ruled on, all
2 right, and as per the discussion earlier. The next one is
3 15.

4 MR. CLARK: Interrogatory number 11.

5 MR. BENNETT: We withdraw 15.

6 THE COURT: Request number 15 is withdrawn?

7 MR. BENNETT: Yes, Judge.

8 THE COURT: Number 18, "Produce all dispute
9 letters sent to you by a consumer with a Virginia address
10 since January 2011." The only objection to that is the
11 privacy.

12 MR. CLARK: Your Honor, also it doesn't have
13 anything to do with this case. It's not limited to the
14 issues in this case.

15 MR. BENNETT: It is, though, reasonably
16 calculated to discover the evidence that is limited to
17 this case.

18 THE COURT: How?

19 MR. BENNETT: Which is -- and the defendant has
20 not objected, Your Honor, but for claiming it would
21 violate the Fair Credit Reporting Act.

22 THE COURT: Yes. Their only objection made is
23 the privacy objection.

24 MR. McLOON: Your Honor, there will be thousands
25 and thousands --

1 THE COURT: Mr. McLoon, you should have thought
2 about that when you wrote your objections. You've
3 objected and -- the rule is you file your objection or you
4 lose it. Sorry, but that's the rule.

5 MR. CLARK: Your Honor, Joe Clark here. We
6 objected not only on burden and scope and it being
7 overbroad --

8 THE COURT: Where?

9 MR. CLARK: We also objected --

10 THE COURT: Mr. Clark, where is it? Maybe I've
11 misread it. Where in your objection is it?

12 MR. CLARK: I stand corrected, Your Honor. You
13 are correct that it is the privacy issues that we raised
14 here. Those privacy issues, I wanted to say, go beyond
15 the FCRA.

16 THE COURT: Okay.

17 MR. McLOON: Your Honor, you're being asked to
18 order us to do this, and I would just urge you to consider
19 Federal Rule of Civil Procedure number one. We're
20 being ordered to --

21 THE COURT: Mr. McLoon, there are rules that talk
22 about how you file objections, and if you haven't filed
23 them, then they're waived.

24 MR. McLOON: I'm asking the Court to give us
25 permission in this one case to supplement our objection

1 that these requests have nothing to do with the issues in
2 this case. There are -- I would represent to the Court
3 I've been doing this for 20 years. Of all of the disputes
4 we're going to receive from Virginia consumers, it would
5 be a very microscopic percentage that would have submitted
6 less than full social security numbers.

7 So you may be talking about 20,000 disputes and
8 maybe a handful, ten, 12, a dozen are going to be involved
9 in this case. So we are producing tens of thousands of
10 letters that have nothing to do with this case, and these
11 are all having to do with the private personal information
12 of Virginia consumers. I just don't understand why the
13 Court would order that.

14 THE COURT: Mr. McLoon, the rules are the rules,
15 and you need to live by them.

16 MR. McLOON: I'm asking the Court to give us
17 leave to supplement our objections to object that these
18 are not reasonably calculated to lead to discovery of
19 admissible evidence in this case, and they're burdensome.

20 THE COURT: You've just expanded it.

21 MR. McLOON: I apologize. I didn't think I had.
22 That's what I was trying to convey to the Court, that
23 there would be a lot of these, and they would have nothing
24 to do with this case. They are not limited to the issues
25 in this case.

1 THE COURT: Mr. Bennett.

2 MR. BENNETT: Your Honor, first of all, the
3 defendant has not even asked until now, until this moment
4 hasn't asked us --

5 THE COURT: Mr. Bennett, he is asking for leave
6 to amend his objection in that fashion.

7 MR. BENNETT: Your Honor, certainly we would
8 object to that at this late hour. We would be prejudiced
9 given the commitments that we've already made and
10 telegraphed in the case. We are deep in it with mediation
11 in two days.

12 We have -- already we're having to ask the Court
13 to enlarge discovery to permit their response, and we've
14 narrowed it to Virginia. We've narrowed it to a narrow
15 time frame, and we've narrowed it only to those consumers
16 that are making an actual credit reporting dispute as
17 opposed to requesting copies of their credit report or --

18 THE COURT: Well, it doesn't say that. It says
19 all dispute letters.

20 MR. BENNETT: Yes, Your Honor, all consumer
21 dispute letters, and the defendant's primary argument so
22 far with us offline have been the ascertainability and the
23 typicality arguments trying to piggyback on our loss in
24 Soutter, and the defendants -- and we have offered them
25 the compromise that if we did have this letter -- Mr.

1 McLoon claims it's infinitesimally small with nothing
2 other than these very generalized -- the same generalized
3 overview that you've received we get, that -- then the
4 defendant could stipulate that if they had to go through
5 and look at those letters, they would be able to identify
6 and ascertain class members who had requested --

7 MR. McLOON: I have no problem with that. I have
8 no problem saying that if we look at the letters we can
9 tell whether they are in the class or not. I have no
10 problem with that.

11 MR. BENNETT: And that you are not going to claim
12 the burden of looking at those letters as a bar to class
13 certification.

14 MR. McLOON: Correct.

15 THE COURT: Say it fully.

16 MR. McLOON: That we will not argue that the
17 burden of looking at letters is a ground to deny class
18 certification and that if we did look at the letters, we
19 could figure out whether the person was in the class or
20 not.

21 THE COURT: Do you agree with that, Mr. Bennett?
22 Do you withdraw it because of the stipulation or not?

23 MR. BENNETT: Judge, I'd have -- if I can think
24 about the stipulation, make sure that the wordsmithing
25 that Mr. McLoon is thinking is not leaving any language

1 loophole and then provide a response after I've looked at
2 it in writing and responded. In concept, we would agree
3 with that.

4 THE COURT: It's tentatively withdrawn as per the
5 stipulation, wording to be determined, and you will
6 determine the wording when?

7 MR. BENNETT: By close of business tomorrow.

8 THE COURT: That's fine. All right, request for
9 production number -- no, wait a minute. Yeah, number
10 18 -- number 26, excuse me. Please produce --

11 MR. CLARK: We already handled that, Your Honor.

12 THE COURT: We didn't do production 26, did we?
13 I don't think so.

14 MR. CLARK: It relates in substance to, I
15 believe, interrogatory number 11.

16 THE COURT: Okay, so it's tied to the ruling on
17 number 11.

18 MR. CLARK: Yes, sir.

19 THE COURT: All right, 28.

20 MR. BENNETT: Yes, Your Honor.

21 THE COURT: "Produce a copy of all letters,
22 notices, or other document, whether sent electronically or
23 hard copy, provided to any consumer in the five years
24 preceding the filing of this complaint in which additional
25 identifying information was requested before you would

1 process their dispute."

2 The objection is -- it says here that Experian
3 and plaintiffs have agreed to withdraw request for
4 production number 28 upon Experian providing a complete
5 response to number 15, and then it's objected to because
6 of the privacy rights objection.

7 MR. McLOON: I think Your Honor has already
8 handled 15, Your Honor.

9 MR. BENNETT: We'll withdraw 28.

10 THE COURT: Next one is 29, "Please produce all
11 written communications received from any consumer on or
12 after December 28, 2007, for whom a disclosure log shows
13 that on or after December 28, 2007, Experian responded to
14 that communication and mailed a letter type number 066, or
15 one described in Experian's records as or with a notation
16 substantially similar to 'Letter paragraphs=Not mine or
17 non-specific disp-no SSN (066).'

18 MR. BENNETT: Your Honor, this is a subset of the
19 class. There were two letters that Experian used when a
20 consumer did not have a social security number. This was
21 one that was used more recently and much more narrowly,
22 and the disclosure log is a form that this, as you've
23 already heard from Mr. McLoon's earlier suggestions why
24 can't they produce just the disclosure log, this is a
25 document internal to Experian that it can use to narrow

1 and search to this small subset of consumers.

2 Mr. McLoon says for Virginia, for example, the
3 small fraction of the disputes or communications would
4 apply in this case. Well, this interrogatory asks for
5 that small fraction of those consumers that Experian --

6 MR. McLOON: Is this Virginia only?

7 MR. BENNETT: It's not Virginia only.

8 THE COURT: This is not tied to Virginia only.

9 MR. McLOON: Your Honor, there are over 60,000
10 people. We could identify in a matter of about two to
11 three minutes the list of people, but to get copies of all
12 correspondence with those people, over 60,000 people
13 that's about 20 minutes per, you are talking about 20- to
14 30,000 hours it would take.

15 MR. BENNETT: We would agree to narrow, if they
16 give us the complete list, Your Honor, if they narrowed
17 the production of documents to just Virginia, then we
18 would agree to narrow the request, but the burdensomeness
19 objection is again as before, they didn't make that, and
20 it is not the basis for their objection.

21 MR. McLOON: Again, Your Honor, I would request
22 leave. 60,000 people. It's over 60,000, the number of
23 people who got that letter, and it was an error if we did
24 not object on the grounds of burden.

25 THE COURT: Mr. McLoon, I'm not -- I'm -- I hear

1 your request, your objection, and I'm going to give Mr.
2 Bennett a chance to say what he wants to say about it. Do
3 you have anything else to say about it, your request to
4 amend your objection?

5 MR. McLOON: We have been talking with them about
6 this issue. Mr. Bennett is fully aware of the process
7 which we have to retrieve hard copy of correspondence. He
8 understands it's not something we can do on an automated
9 basis.

10 It's a manual process of finding the
11 correspondence and making a copy of it, and we've shared
12 with him going back a period of months that the number was
13 over 60,000. It's inconceivable that he didn't understand
14 months ago that we thought this was burdensome.

15 THE COURT: That doesn't make any difference,
16 what he understood. It's what position you staked out.
17 All right, Mr. Bennett, what do you say?

18 MR. BENNETT: Judge, that is not what -- I
19 certainly don't agree with Mr. McLoon when he suggests I
20 know that it's so burdensome. In every meet-and-confer,
21 I've disagreed. The other defendants and other defendants
22 in other cases have done it.

23 THE COURT: Other defendants in other cases in
24 class certification have provided answers to a document --
25 responses to a document request of this sort; is that what

1 you are saying?

2 MR. BENNETT: Yes, Your Honor.

3 MR. McLOON: Over 60,000 people's correspondence?

4 THE COURT: Just a minute, Mr. McLoon. I'm
5 asking the questions now. I did intend to ask, did it
6 involve the volume that Mr. McLoon says is involved here.

7 MR. BENNETT: Well, it has involved much greater.
8 In the *Cappetta v. GC Services* case, 3:08CV288, Judge
9 Spencer considered exactly the same argument from a Fair
10 Credit Reporting Act defendant, GC Services, claiming it
11 had 500,000 files, and the defendant was ordered to
12 provide a mirrored copy of the database so that our
13 experts could then obtain the information, which we did,
14 and the class was certified over contest.

15 THE COURT: Would you take that here?

16 MR. BENNETT: We did, Your Honor. In addition,
17 Your Honor has already --

18 THE COURT: Wait a minute, we did. I mean is
19 that same solution a solution to number 29 --

20 MR. McLOON: I don't believe it's technically
21 feasible --

22 THE COURT: Mr. McLoon, just a minute. Let Mr.
23 Bennett answer, and then you'll have a chance.

24 MR. BENNETT: Yes, Your Honor, we would take that
25 just as we did with the CoreLogic case where initially the

1 defendant argued that was not feasible either, and now we
2 have a mirror of that database to obtain the data we
3 received just a little bit --

4 THE COURT: In other words, they give you a
5 database, and then you do the work of extracting the
6 letters that meet this description; is that what you are
7 saying?

8 MR. BENNETT: Yes, Judge. We pay for it, we have
9 the burden of putting the staff up and making it happen.

10 THE COURT: Mr. McLoon, why can't you provide him
11 a mirror image of the database that you have that has this
12 information in it?

13 MR. McLOON: Well, A, we're talking about
14 millions of consumers. There is no way to do it
15 otherwise, and we are talking about essentially almost a
16 significant percentage of everyone in the United States.
17 There's no way that I'm aware of, Your Honor, to pare this
18 down to communications that relate to this lawsuit.

19 THE COURT: You said 60,000 earlier.

20 MR. McLOON: 60,000, but the actual
21 correspondence is not sorted -- we could identify the
22 60,000 people very simply in a search, and we could give
23 them the list of names, but to go and find all of the
24 copies of correspondence from those 60,000 people, you've
25 got to be looking in a database dealing with millions and

1 millions of people, and it's one of the largest databases
2 in the world.

3 It has, you know, all of those people's personal
4 confidential information that have nothing to do with this
5 lawsuit, have never made the kind of dispute that's at
6 issue in this case are all in the same database. It would
7 be -- A, I'd be surprised if there's many computers around
8 that Mr. Bennett has access to that could hold a database
9 that size. You're talking about an IBM mainframe
10 computer. It's just inconceivable to me that it could
11 technically be done.

12 THE COURT: Well, Mr. Bennett says it can be
13 done.

14 MR. McLOON: Mr. Bennett doesn't know our
15 computer system, Your Honor. He's never done anything
16 like that before with our database.

17 MR. BENNETT: Your Honor, what we could do is
18 what we did in *Cappetta*, which is we could send our
19 computer expert down. Experian could pre-vet them, send
20 our computer expert down.

21 CoreLogic had a mainframe. Its database was
22 similar, but the data itself can be exported in almost
23 every instance into a more conventional database format,
24 particularly when all we're talking about here are
25 archived copies of scanned documents that this defendant

1 and its staff regularly accessed when sued by these
2 consumers so they could defend and try to beat the
3 consumer's lawsuit.

4 THE COURT: So you are prepared to send your
5 person down there and do that?

6 MR. BENNETT: We will, Your Honor, yes.

7 THE COURT: Any reason he can't do that, Mr.
8 McLoon?

9 MR. McLOON: Your Honor, we can vet the person.
10 I'd be happy to have them meet with our technological
11 people and figure out if a copy could be made, but I want
12 Your Honor to understand, we think it is horribly unfair
13 to millions of people whose personal private information
14 has nothing to do with this case, millions of people, and
15 it's being handed over to third parties who we have no
16 idea who they are --

17 THE COURT: Of course you do. It's under a
18 protective order. That's a disingenuous argument.

19 MR. McLOON: Well, Your Honor --

20 THE COURT: Mr. McLoon. Mr. McLoon, in addition
21 to that, you have it within your wherewithal to do this
22 and to find it, and he's offering you another alternative,
23 one that has been approved by other judges in this
24 district and, frankly, one that makes sense.

25 MR. McLOON: Your Honor, can I explain what I

1 think the differences are?

2 THE COURT: No, Mr. McLoon, you are arguing about
3 an objection that you didn't make. You know --

4 MR. McLOON: We're talking about a process that
5 isn't even being requested here, Your Honor.

6 THE COURT: He's not going -- he's offering you a
7 compromise to this. If you don't want to do it, fine,
8 I'll rule on the request.

9 MR. McLOON: I want the Court to understand that
10 there are over 60,000 people who will be responsive to
11 this request, and my honest, best-faith estimate is it's
12 about 15 minutes per, 15 to 20 minutes per in order to do
13 this. And that's literally what he's asking us to do.

14 MR. BENNETT: Mr. McLoon represented until now it
15 was 15,000, a little less. The last time he and I were on
16 the phone together was the videoconference. We were told
17 it was less than 15,000, and now it's apparently 60,000.
18 In reality, it might be something less once the work is
19 done.

20 MR. McLOON: Let me check with my colleagues,
21 Your Honor. If I'm misspeaking, I apologize. Joe and Ed,
22 how many people got the 66 paragraphs?

23 MR. CLARK: Right. So 15,357. The issue is that
24 there are different paragraphs 66, 903 --

25 MR. McLOON: I apologize, Your Honor. I was

1 misspeaking.

2 MR. CLARK: There are a lot of different numbers
3 that are floating around.

4 MR. McLOON: It is 15,000. We're talking about
5 paragraph 66. I misspoke on my part.

6 THE COURT: All right, now, the objection
7 respecting privacy is overruled. The motion verbally made
8 to include a burdensomeness objection is overruled. It
9 wasn't an accident. All of these objections appear here
10 about privacy, and a number of them -- and they were all
11 carefully thought out.

12 It's clear from what you all know that at the
13 time, as said here in the record, the defendant knew at
14 the time that it had some idea of the volume. As I have
15 gotten into the volume -- I mean into these objections, it
16 seems to me they were carefully thought out, and they
17 don't include a burdensomeness objection.

18 But if I were to be considering it on the basis
19 of burden, the number of documents has been referred to as
20 60,000, and mistakenly so, and it's 15,000. And that is
21 not an insubstantial amount of work to be done. However,
22 given the importance of these kinds of documents to the
23 certification process, it is a reasonable thing to request
24 and get this information. There's no objection that it's
25 not doable.

1 In addition to that, the recitation of burden
2 hasn't really been documented, whereas here the figures
3 vacillate by a factor of four. The Court can't really
4 rely on that estimate on the basis of an -- in order to
5 give the protection sought by the defendant.

6 I think the burden -- it is true that you can't
7 push a button and get these things, but the company is in
8 litigation all the time. It chose to keep its records in
9 this fashion, and when the time comes that a record is
10 relevant, discoverable, reasonably calculated to lead to
11 discovery of admissible evidence and it has it, then it
12 will have to pay the consequences of producing the records
13 from the system that it chose to use. So for those
14 reasons, the objection is overruled.

15 The only question I have is whether or not there
16 was any modification to number 29 to the date.

17 MR. BENNETT: There was not, Judge, but the
18 particular letter that's requested, the 66 letter, was not
19 used until the more recent part of the class period.

20 MR. McLOON: I don't believe it was used until
21 2011 for the first time.

22 THE COURT: What date are we going to use for the
23 order?

24 MR. BENNETT: We could use January 1, 2011, Your
25 Honor.

1 THE COURT: Does that suit you?

2 MR. McLOON: There's going to be nothing between
3 January and some date in July, but that's fine.

4 MR. CLARK: July 10th.

5 THE COURT: We'll just take January 1, 2011. I
6 think that takes care of all -- no, number 31. 31,
7 "Please produce all emails which reference or relate in
8 any way to this case or which contain any of the following
9 phrases: "Menton," "identification," "identifying
10 information," or "utility bill."

11 That is objected to as overly broad and
12 burdensome, and that's further evidence that the defendant
13 knows when to make a burdensome objection, and it made it
14 here. Then, let's see. Is there anything else? I guess
15 it's all burdensomeness.

16 MR. BENNETT: Your Honor, we agree to narrow this
17 to include specific records, possible records custodians
18 working at the supervisor or management level of the
19 national -- or the NCAC, which is the Texas dispute
20 facility, or within the Experian compliance department in
21 Costa Mesa.

22 MR. CLARK: Your Honor, this is Joe Clark. We
23 are running searches across email custodians based on that
24 modification.

25 THE COURT: And? Have you all resolved this in

1 that fashion? Is that what you are saying?

2 MR. CLARK: I believe so, Your Honor.

3 THE COURT: So it will read, "Please produce all
4 emails which reference or relate in any way to this case
5 or which contain any of the following phrases." Then how
6 do you modify it? Which are in or which appear in the
7 what, the emails of who?

8 MR. BENNETT: Within the email of supervisor or
9 management employees of Experian within either its NCAC or
10 compliance departments.

11 THE COURT: Supervisor and management?

12 MR. BENNETT: Yes, Your Honor.

13 THE COURT: Do you agree to that, Mr. Clark?

14 MR. CLARK: Yes, sir. We're running those
15 searches at present.

16 THE COURT: So added to the text of 31 is, which
17 appear in emails of supervisors and management in
18 Experian's NCAC facility; is that what it is? Or
19 compliance department; is that right?

20 MR. CLARK: Center.

21 THE COURT: Center. Compliance center, okay.
22 Okay. You all have agreed to that. All right, that takes
23 care of everything I think here.

24 Now, on these privacy objections, even though
25 they've been overruled, you have to treat them under

1 protective order, Mr. Bennett.

2 MR. BENNETT: We understand, Your Honor.

3 THE COURT: And if they're ever filed anywhere,
4 they have to be filed under seal or in some way to protect
5 them.

6 MR. BENNETT: Yes, Judge.

7 THE COURT: Is there anything else that needs to
8 be done?

9 MR. BENNETT: No, Your Honor, I don't believe so.

10 MR. CLARK: Not for the defense, Your Honor.

11 THE COURT: Mr. Bennett, you can get a transcript
12 from the court reporter and -- by the way, what about the
13 dates? What about the dates in which these amended -- I
14 mean these documents have been produced and answers have
15 to be provided? What dates are we going to have in the
16 order?

17 MR. McLOON: Your Honor, I don't even know how
18 many Virginia residents there are. I wouldn't even begin
19 to be able to tell you how long it's going to take us.

20 THE COURT: You want me to tell you, or do you
21 want --

22 MR. McLOON: Your Honor, I'm sure Your Honor has
23 great experience in this area. All I can represent to you
24 is that this is a manual process. There could be tens of
25 thousands of them.

1 THE COURT: Mr. McLoon, I don't know whether you
2 meant that specifically or not, but the fact of the matter
3 is, in the past, I have, in fact, had extensive
4 experience, both litigating over and, in fact, rooting
5 through documents of great volume, and I know there are
6 systems and ways to make it efficient and to do it
7 reasonably that can be adapted in almost any case.

8 There are professional services. In fact, there
9 are law firms that have entire practices devoted to this,
10 and I'm sure they can help you out.

11 And before any claim of burden is made from now
12 on, maybe there will be some talking to all these people
13 and providing information that will be sufficient for the
14 Court to conclude that there actually is burden, but he
15 who cries burden too often will find that it's hard to
16 buy, particularly where, as in this instance, a number of
17 things turned out, upon close examination, not to really
18 be very burdensome at all, or if so, they're burdensome
19 within a tolerance that is appropriate given what is at
20 stake in the case.

21 Now, Mr. Bennett, have you got any ideas on the
22 dates of compliance?

23 MR. BENNETT: Your Honor, the defendant was
24 previously representing October 4th, but if the defendant
25 had until October 13th.

1 MR. McLOON: If the numbers are what I expect
2 they are, Your Honor, I don't believe we can completely
3 comply by that date. We can do it on a rolling basis.
4 Until I know the numbers, I feel very uncomfortable
5 telling the Court that that's possible.

6 Now, Your Honor has great experience, and I can't
7 disagree with that. I'm just telling you, I know the
8 system. I've worked with it for years. It is a manual
9 process, and it is time-consuming. We're talking about
10 numbers of 15,000 for the letter 66, and I don't know how
11 many total Virginia consumers submitted disputes during
12 this time period, but it could be in the tens of
13 thousands. It could be.

14 All we can do is what we can do. We can't shut
15 our client's business down for two months to do this, so
16 we'll do the best we can. We can start producing
17 almost -- within two weeks and then do our best to get it
18 done as quickly as possible after that. That's all I can
19 say in this call.

20 THE COURT: Well, I'm going to give you a
21 deadline of October 30 to have it all done.

22 MR. McLOON: I would request, Your Honor, if we
23 determine the process is taking longer, that we'll come
24 back and work with the plaintiff to see if we can come up
25 with a stipulation.

1 THE COURT: You all can do what you need to do,
2 but I have no information there's any risk of shutting
3 down Experian's business in order to do this. Nobody has
4 made any showing to that effect.

5 MR. McLOON: Of course I understand. I was
6 saying there's certainly limits on what we're capable of
7 doing given practical constraints. There's only a certain
8 number of employees who are trained to do this. We can't
9 create new employees overnight. It would take training
10 time and things like that. There's just certain limits
11 we're going to have to be stuck with, and we'll do the
12 best we can within those limits.

13 THE COURT: Mr. McLoon, in 1975, there was a
14 multidistrict litigation filed here in front of Judge
15 Merhige, and much of the same complaint that you are
16 making now was made on the basis of sort of the same kind
17 of general information, and the Judge ordered that these
18 documents, most of which were in salt mines, literally in
19 salt mines in no organized fashion, be reviewed and be
20 produced.

21 And it was represented that they'd have to be
22 special people to be able to do it, and it was represented
23 that it would take somebody with knowledge to do it and
24 every complaint known to God or man about why it couldn't
25 be done was raised.

1 But the fact of the matter is it was done, and it
2 was done by virtue of agreements between lawyers and a
3 client that wanted to end up complying with what the Judge
4 had ordered to be done and lawyers who were creative in
5 figuring out a way to do it. In some instances, there
6 were things that actually it turned out could not be done,
7 and in other instances there were things that turned out
8 to have been thought extremely difficult of achievement
9 that really were not at all.

10 Lawyers working together -- and today there are
11 professional services available that actually have refined
12 the techniques and linked them to the modern-day world of
13 the salt mine which is the ether where the documents are
14 now held. Your client needs to learn that it needs to
15 focus on that aspect of its responsibilities when it's in
16 litigation. All right, that takes care of everything.

17 Mr. Bennett, you can get a copy of the transcript
18 and send me a draft order which I'll expect will
19 faithfully indicate or reflect every ruling that has been
20 made here without any inflation or exaggeration.

21 MR. BENNETT: Yes, Judge.

22 THE COURT: I'll expect you to have that here
23 next week. Thank you. Bye-bye.

24 MR. BENNETT: Thank you.
25

1 (End of proceedings.)

2

3

4 I certify that the foregoing is a correct

5 transcript from the record of proceedings in the

6 above-entitled matter.

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10 /s/
P. E. Peterson, RPR

Date _____

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